

## 1 SENATE BILL NO. 188

2 INTRODUCED BY COCCHIARELLA, GLASER, GOLIE, LANGE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO  
5 INCLUDE LICENSED ELECTRICAL CONTRACTORS AND LICENSED MASTER PLUMBERS IN THE  
6 STANDARD PREVAILING WAGE SURVEY; AMENDING SECTION 18-2-401, MCA; AND PROVIDING AN  
7 IMMEDIATE EFFECTIVE DATE."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10

11 **Section 1.** Section 18-2-401, MCA, is amended to read:

12 **"18-2-401. Definitions.** Unless the context requires otherwise, in this part, the following definitions  
13 apply:

14 (1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior  
15 to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the  
16 conclusion that the person's past habitation in this state has been coupled with an intention to make it the  
17 person's home. Persons who come to Montana solely in pursuance of any contract or agreement to perform  
18 labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of  
19 this part.

20 (2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

21 (3) (a) "Construction services" means work performed by an individual in construction, heavy  
22 construction, highway construction, and remodeling work.

23 (b) The term does not include:

24 (i) engineering, superintendence, management, office, or clerical work on a public works contract; or

25 (ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with  
26 professionals licensed under state law.

27 (4) "Contractor" means any general contractor, subcontractor, firm, association, partnership,  
28 corporation, limited liability partnership, or limited liability company engaged in construction services.

29 (5) "Department" means the department of labor and industry provided for in 2-15-1701.

30 (6) "District" means a prevailing wage rate district established as provided in 18-2-411.

1 (7) "Employer" means any firm, association, partnership, corporation, limited liability partnership, or  
2 limited liability company engaged in nonconstruction services.

3 (8) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health  
4 and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security  
5 Act of 1974 and other bona fide programs approved by the United States department of labor and zone pay and  
6 travel allowance that are determined and established statewide for heavy and highway construction projects,  
7 such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, utility rights-of-way,  
8 staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt,  
9 concrete, or backfill when the pit does not normally sell to the general public.

10 (9) "Nonconstruction services" means work performed by an individual, not including management,  
11 office, or clerical work, for:

12 (a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets,  
13 and alleys;

14 (b) custodial or security services for publicly owned buildings and facilities;

15 (c) grounds maintenance for publicly owned property;

16 (d) the operation of public drinking water supply, waste collection, and waste disposal systems;

17 (e) law enforcement, including janitors and prison guards;

18 (f) fire protection;

19 (g) public or school transportation driving;

20 (h) nursing, nurse's aid services, and medical laboratory technician services;

21 (i) material and mail handling;

22 (j) food service and cooking;

23 (k) motor vehicle and construction equipment repair and servicing; and

24 (l) appliance and office machine repair and servicing.

25 (10) "Project location" means the construction site where a public works project involving construction  
26 services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and  
27 specifications.

28 (11) (a) "Public works contract" means a contract for construction services let by the state, county,  
29 municipality, school district, or political subdivision or for nonconstruction services let by the state, county,  
30 municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000. The

1 nonconstruction services classification does not apply to any school district that at any time prior to April 27,  
2 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

3 (b) The term does not include contracts entered into by the department of public health and human  
4 services for the provision of human services.

5 (12) "Special circumstances" means all work performed at a facility that is built or developed for a  
6 specific Montana public works project and that is located in a prevailing wage district that contains the project  
7 location or that is located in a contiguous prevailing wage district.

8 (13) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

9 (i) the heavy and highway construction wage rates applicable to heavy and highway construction  
10 projects; or

11 (ii) those wages, other than heavy and highway construction wages, including fringe benefits for health  
12 and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of  
13 1974 and other bona fide programs approved by the United States department of labor and travel allowance that  
14 are paid in the district by other contractors for work of a similar character performed in that district by each craft,  
15 classification, or type of worker needed to complete a contract under this part. In each district, the standard  
16 prevailing rate of wages must be computed by the department based on work performed by electrical contractors  
17 who are licensed under Title 37, chapter 68, master plumbers who are licensed under Title 37, chapter 69, part  
18 3, and Montana contractors who are registered under Title 39, chapter 9, and whose work is performed  
19 according to commercial building codes. The contractor survey must include information pertaining to the  
20 number of skilled craftspersons employed in the employer's peak month of employment and the wages and  
21 benefits paid for each craft. In setting the prevailing wages from the survey for each craft, the department shall  
22 use the weighted average wage for each craft, except in those cases in which the survey shows that 50% of the  
23 craftspersons are receiving the same wage. When the survey shows that 50% of the craftspersons are receiving  
24 the same wage, that wage is the prevailing wage for that craft. The work performed must be work of a similar  
25 character to the work performed in the district unless the annual survey of construction contractors and the  
26 biennial survey of nonconstruction service employers in the district does not generate sufficient data. If the  
27 survey produces insufficient data, the rate may be established by the use of other information or methods that  
28 the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall  
29 establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules  
30 must establish a process for determining if there is insufficient data generated by the survey of employers in the

1 district that requires the use of other methods of determining the standard prevailing rate of wages. The rules  
2 must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use  
3 other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative  
4 methods of determining the prevailing rate of wages must provide for review and the incorporation of data from  
5 work of a similar character that is conducted as near as possible to the original district.

6 (b) When work of a similar character is not being performed in the district, the standard prevailing rate  
7 of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements  
8 of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States  
9 department of labor and the rate of travel allowance must be those rates established by collective bargaining  
10 agreements in effect in the district for each craft, classification, or type of worker needed to complete the  
11 contract.

12 (14) "Work of a similar character" means work on private commercial projects as well as work on public  
13 projects."  
14

15 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

16 - END -